IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

CIVIL APPLICATION NO.2821 OF 2003.
IN
FIRST APPEAL NO.370 OF 2007.

New India Assurance Co.Ltd. ... Applicant.
Versus.
Shamrao Laxman Nalawade & ors. ... Respondents.

Ms.Sarojini Patel i/by M/s.Singhania & Co.for the Applicant.

Ms.Sangeeta Chaudhary i/by Mrs.Revati M.Dere for the Respondents Nos.1 and 2.

CORAM : ABHAY S.OKA, J.

DATED : 12th February, 2007.

P.C.:

1. Heard the Advocate for the Applicant and the Advocate for the 1st and 2nd Respondents. The Applicant is the Appellant. The Applicant is the insurer of the offending vehicle involved in the accident. The contention of the Applicant is that the passengers were carried in the vehicle in breach of the terms and conditions of the policy of insurance. The finding of the Tribunal is that the deceased was travelling in the truck along with goods as caretaker of the goods. The finding of the Tribunal is that the Applicant has failed to prove breach of the terms and conditions of the policy.

2. Even if the Applicant succeeds in the Appeal, the award against the insured will remain and the

Applicant can always recover the compensation from the insured. Considering these facts and considering the findings recorded, no case is made out for grant of stay to the execution of the impugned awarded. Subject to what is observed earlier, the Application is rejected. It is made clear that the payment of the compensation amount to the original Claimant will be subject to the final outcome of the Appeal.

Judge.